



Federal Communications Commission
Washington, D.C. 20554

August 3, 2004

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In Reply Refer To: 1800B3-SLS

NAL/Acct. No.: MB20041810071

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Lauren A. Colby, Esq.
10 E. Fourth Street
P.O. Box 113
Frederick, MD 21705-0113

In re: WSMX, Winston-Salem, NC
Gospel Media, Inc.
Facility ID No. 24682
File No. BR-20031210ACU
Petition for Acceptance of
Application Nunc Pro Tunc

Dear Mr. Colby:

This letter refers to Gospel Media, Inc.'s ("GMI") untimely application for renewal of license for station WSMX(AM), Winston-Salem, North Carolina.¹ For the reasons set forth below, we issue a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE to GMI for its failure to timely file a license renewal application and for unauthorized operation, and we grant GMI's license renewal application.

An application for renewal of WSMX(AM)'s license should have been filed by August 1, 2003.² No such application was filed, and the station's license expired on December 1, 2003. Upon learning of the expiration of the WSMX license, GMI: (1) contacted legal counsel;³ (2) tendered the subject license renewal application;⁴ (3) commenced running post-filing

¹ See Application for Renewal of License for AM, FM, TV, Translator or LPTV Station, filed by Gospel Media, Inc., Facility Identifier 24682 (filed Dec. 10, 2003).

² 47 C.F.R. § 73.3539 ("[A]n application for renewal of license shall be filed not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed . . .").

³ See Petition for Acceptance of Application Nunc Pro Tunc, filed by Gospel Media, Inc., Facility Identifier 24682 (filed Dec. 12, 2003) ("Petition").

announcements pursuant to Section 73.3580 of the Commission's rules;⁵ and (4) tendered a request for Special Temporary Authorization ("STA") to continue operation of WSMX(AM) pending action on the license renewal application.⁶ The staff granted the STA request on December 17, 2003.⁷

Upon the December 1, 2003, expiration of WSMX(AM)'s license, GMI's operation of WSMX(AM) was unauthorized and should have ceased immediately. In its petition, GMI cites "a failure of communication" but fails to provide sufficient explanation to justify its failure to file a timely renewal application.⁸

The guidelines contained in the Commission's *Forfeiture Policy Statement*⁹ specify a base forfeiture amount of \$3,000 for a failure to file a required form. The guidelines also specify a base forfeiture amount of \$10,000 for construction and/or operation without an instrument of authorization for the service. Section 503(b)(2)(D) of the Communications Act requires the Commission to consider "the nature, circumstances, extent and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."¹⁰ In this case, GMI failed to timely file the WSMX(AM) renewal application and continued station operations for approximately two weeks before filing the appropriate application and seeking STA to continue operations. On the other hand, GMI had previously been licensed to operate Station WSMX(AM), so this transgression is not comparable to "pirate" wireless operations, which typically have been subject to forfeitures of approximately \$10,000.¹¹ Taking into consideration these facts and all of the factors required by Section 503(b)(2)(D) of the Act and the *Forfeiture Policy Statement*, we will impose the full \$3,000 forfeiture for the failure to timely file the renewal application but reduce the forfeiture for the unauthorized operation from \$10,000 to \$3,000.¹²

License renewal application. In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Communications Act.¹³ This

⁴ See *supra* note 6.

⁵ 47 C.F.R. 73.3580 (identifying requirements for local public notice of filing of broadcast applications).

⁶ See FCC File BLSTA-20031215ACD, filed by Gospel Media, Inc., Facility Identifier 24682 (filed Dec. 13, 2003).

⁷ See *Letter from Peter H. Doyle to Lauren A. Colby* (Dec. 17, 2003).

⁸ See *supra* note 3.

⁹ *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17115 ("Forfeiture Policy Statement").

¹⁰ 47 U.S.C. § 503(b)(2).

¹¹ *Joe L. Ford d/b/a Ford Communications*, 15 FCC Rcd 23721, 23722 (E.B. 2000), citing *Jean R. Jonassaint*, 15 FCC Rcd 10422 (E.B. 2000).

¹² See, e.g., *Discussion Radio Incorporated*, 19 FCC Rcd 7433, 7438 (2004).

¹³ 47 U.S.C. 309(k).

section provides that if, upon consideration of the application and pleadings, we find: (1) the station has served the public interest, convenience, and necessity; and (2) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.¹⁴ If, however, the licensee fails to meet this standard, the Commission may deny the application—after notice and opportunity for a hearing under Section 309(e) of the Act—or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise provided.”¹⁵

We find that neither of GMI’s established violations constitute a “serious violation” of the Commission’s rules warranting designation for evidentiary hearing. Moreover, we find that these violations, when considered together, do not evidence a pattern of abuse.¹⁶ Further, we find that station WSMX(AM) served the public interest, convenience, and necessity during the subject license term. We will therefore grant GMI’s license renewal application below.¹⁷

Conclusion/Actions. For the reasons set forth above, and pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. 503(b), and Sections 0.283 and 1.80 of the Commission’s Rules,¹⁸ Gospel Media, Inc., is hereby advised of its apparent liability for a forfeiture of \$6,000 for willfully and repeatedly violating Section 73.3539 of the Commission’s rules and Section 301 of the Communications Act of 1934, as amended.¹⁹

Accordingly, IT IS ORDERED, pursuant to Section 1.80 of the Commission’s rules, that within thirty (30) days of the date of this Notice, GMI SHALL PAY to the United States the full amount of the proposed forfeiture of SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

Payment of the forfeiture may be made by credit card through the Commission’s Revenue and Receivables Operations Group at (202) 418-1995 or by mailing a check or similar

¹⁴ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). *See Order, Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, 11 FCC Rcd 6363 (1996).

¹⁵ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁶ For example, we do not find here that the licensee’s station operation “was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies.” *See Heart of the Black Hills Station*, 32 F.C.C.2d 196, 198 (1971). Nor do we find on the record here that “the number, nature and extent” of the violations indicate that “the licensee cannot be relied upon to operate [WSMX(AM)] in the future in accordance with the requirements of its licenses and the Commission’s Rules.” *Heart of the Black Hills Station*, 32 F.C.C.2d at 200. *See also Center for Study and Application of Black Economic Development*, 6 FCC Rcd 4622 (1991), *Calvary Educational Broadcasting Network, Inc.*, 7 FCC Rcd 4037 (1992).

¹⁷ *See supra* note 13.

¹⁸ 47 C.F.R. §§ 0.283 and 1.80.

¹⁹ 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment MUST INCLUDE the FCC Registration Number ("FRN") (0009996745) and should note the NAL/Account Number (MB20041810071) referenced in the caption of this document.

The response, if any, must be mailed to Peter H. Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 2-A360, Washington, D.C. 20554 and MUST INCLUDE the FRN (0009996745) and NAL/Account Number (MB20041810071) referenced in the caption of this document.

The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²⁰

IT IS FURTHER ORDERED, that call sign WSMX(AM) IS REINSTATED and the application (File No. BR-20031210ACU) of Gospel Media, Inc. for renewal of license for station WSMX(AM), Winston-Salem, North Carolina, IS GRANTED.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc: Gospel Media, Inc.

²⁰ See 47 C.F.R. § 1.1914.